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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. **813**

GEORGE GOUMAS,

Petitioner,

—against—

K. KARRAS & SON and SS "KARRAS", her engines, tackle,
appurtenances, etc.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

DAVID P. SIEGEL,
Attorney for the Petitioner.



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No.

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K. KARRAS & SON and SS "KARRAS", her engines, tackle,
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Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

*To the Honorable Chief Justice of the United States and
Associate Justices of the Supreme Court of the United
States:*

Your petitioner George Goumas prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered on the 26th day of January, 1944. Affirming an order of the District Court for the Southern District of New York dismissing petitioner's libel filed against the SS "Karras".

Facts.

The petitioner filed a libel against the SS "Karras" and prayed for an *in personam* judgment against the respondent K. Karras & Son. The master of the SS "Karras" filed a claim to the vessel on behalf of K. Karras & Son, the owner,

and filed an exception to the libel, the attorneys, Reid, Cunningham & Freehill appearing as proctors for the respondents and the claimant (R. 22, 25). That thereafter, upon notice of motion brought on by the attorneys for the respondents and claimant (R. 4), the District Court for the Southern District of New York sustained the exceptions and dismissed the libel (R. 49-52).

The Circuit Court of Appeals on January 26, 1944 handed down its opinion affirming the order of the District Court dismissing the libel.

The petitioner, a ship master duly licensed in the City of New York, received an order from the master of the SS "Karras", a Greek ship flying the Greek flag, and lying in the harbor at Montreal, Canada, to secure for the said vessel eighteen (18) crew men. The petitioner performed his part of the said agreement and did so deliver the seamen at the Canadian border, where they were met by the master of the SS "Karras" and were admitted into Canada by the immigration authorities. The seamen were brought to the vessel, and upon boarding the same, discovered that the ship was unseaworthy, uninhabitable and abounded in vermin, and refused to proceed with the vessel as they had agreed to do (fol. 15).

The seamen were destitute and without funds, and called upon the petitioner for assistance. The petitioner was compelled to and did find board for the seamen, and was compelled to retain counsel to defend himself against charges brought against him by the seamen. That as a result of the misrepresentations of the master of the SS "Karras" with regard to the seaworthiness and habitability of the vessel, the petitioner's place of business in the City of New York was picketed and boycotted by an organization of merchant seamen, and the petitioner filed the petition for libel against the SS "Karras", and for an *in personam* judgment against K. Karras & Son for the damages sustained

by him in expending monies in returning the seamen to the United States and for damages to his reputation and good name.

Questions Presented.

(1) Did the Circuit Court of Appeals err in holding that the District Court lacked admiralty jurisdiction in this case?

(2) Did the Circuit Court of Appeals err in holding that the contract here was not of a maritime nature, and that there was no jurisdiction in admiralty except of a maritime contract?

(3) Did the Circuit Court of Appeals err in holding that even if the libel be regarded as a tort claim, it was not a maritime tort?

(4) Did the Circuit Court of Appeals err in holding that the suit related to events which occurred after the execution of the contract, and that admiralty jurisdiction in any event would be doubtful?

(5) Did the Circuit Court of Appeals err in affirming the order of the District Court dismissing the libel?

Reasons for Granting the Writ.

(1) The Circuit Court of Appeals in holding that the District Court lacked admiralty jurisdiction decided an important question of Federal law which should be settled by the Honorable Court.

(2) The Circuit Court of Appeals in holding that the contract here was not of a maritime character, nor a mari-

time tort if the libel be regarded as a tort claim, ousted the Federal Court of jurisdiction and in effect made it impossible for the plaintiff to procure relief in the Federal Courts.

(3) That certiorari should be granted in the interests of justice since the denial of Federal jurisdictions invokes the important question of the rights of seamen during the war emergency to relief in the Federal Courts.

WHEREFORE, it is respectfully prayed that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and all proceedings in the case at bar, and that the judgment of said Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other, further and different relief in the premises as the Court may deem just and proper.

GEORGE GOUMAS,
Petitioner.

By DAVID P. SIEGEL,
Counsel for Petitioner.

17



IN THE
Supreme Court of the United States

MARCH TERM 1944

No.

GEORGE GOUMAS,

Petitioner,

—against—

K. KARRAS & SON and SS "KARRAS", her engines, tackle,
appurtenances, etc.,

Respondents.

**BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI**

The Opinions Below.

The opinion of the District Court is found in R. 31-48.
The opinion of the Circuit Court of Appeals not yet
reported appears in the Appendix hereto.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered January 26, 1944. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938, 28 U. S. C. A. Sec. 347(a).

Statement.

The statement of the case already given in the petition under the heading "Summary Statement of the Matter Involved" is hereby adopted and made part of this brief.

Specification of Errors.

First: The Circuit Court erred in deciding that the facts averred in the libel were insufficient in law to constitute a cause of action.

Second: The Circuit Court erred in deciding that the facts averred in the libel did not constitute a cause of action within the admiralty and maritime jurisdiction of the United States.

Third: The Circuit Court erred in deciding that the facts averred in the libel did not give rise to any maritime lien upon the S. S. "Karras."

Fourth: The Circuit Court erred in deciding that Section 971 of Title 49 U. S. C. A. did not apply to the cause of action alleged by the petitioner.

Fifth: The Circuit Court erred in affirming the order of the District Court dismissing the libel.

Summary of the Argument.

The points of the brief are summarized in the Subject Index.

A R G U M E N T

POINT I.

The Circuit Court erred in deciding that the facts averred in the libel did not constitute a cause of action within the admiralty and maritime jurisdiction of the United States, and did not give rise to a lien upon the SS "Karras".

46 U. S. C. A., Section 971, *et seq.*, reads:

"Any person furnishing repairs, supplies, towage, use of drydock or marine railway or other necessities to any vessel, whether foreign or domestic, upon the order of the owner of such vessel or of a person authorized by the owner, shall have a maritime lien on the vessel which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given for the vessel."

Section 972 is as follows:

"The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of drydock or marine railway, and other necessities for the vessel: the managing owner, ship's husband, Master or any person to whom the management of the vessel at the port of supply is entrusted
* * * ."

It is undisputed that the master of the vessel was authorized to contract for the procurement of seamen to operate the vessel. That seamen are certainly necessary to navigate and operate the ship is undisputed, for without the crew, the ship is powerless to sail and to accomplish its prime

purpose. It has been held that an agreement to furnish tugs and crews may be the basis of a maritime lien.

In the case of *Munson Inland Water Lines, Inc. v. Seidl*, 71 Fed. (2d) 791 (C. C. A. 7th), Evans, *Circuit Judge*, held:

"The Court found the said libellants Seidl and Angwall, agreed with the Master to furnish tugs and crews at \$25.00 per hour, and such agreed compensation was not to be dependent upon the success of the services, but was to be paid whether or not any of the barges were released or salvaged. This agreement did not defeat Seidl's and Angwall's liens, although it destroyed their asserted status as salvors and their liens as salvage liens."

Therefore, if a contract to furnish a crew is a maritime contract which gives rise to a maritime lien upon the vessel as a "necessary" within the purview of Section 971, then any breach of that contract is likewise maritime in nature, and if damages are sustained as a result of the breach, the Admiralty has the power to award damages flowing from the breach.

In the case of *The Electron*, 48 Fed. 689 (D. C. S. D. N. Y.), at page 690, the Court held:

"It is urged, however, that the cross-libel is for a demand which could not be entertained in admiralty, because it is merely an action for damages for the breach of a contract for supplies. No doubt, if the court was without jurisdiction of the cause of action stated in the cross-libel, the motion should not be granted; but, though actions for damages and for misrepresentations and breaches of contracts for supplies may not be frequent, I cannot regard them as beyond the proper jurisdiction of the admiralty. In the case

of *The Eli Whitney*, 1 Blatchf. 360, though it was held that an action *in rem* would not lie for false representations which had been the inducement to the execution of a charter-party, there is no intimation that an action *in personam* would not lie for such a cause. The contract in this case, being for supplies, is a maritime contract, within the ordinary jurisdiction of the admiralty courts. Upon such a contract, and all its incidents, the rights and remedies of the parties are reciprocal. The contract being maritime, the admiralty, says CURTIS, J., in *Church v. Shelton*, 2 Curt. 271, 274, 'will proceed to inquire into all its breaches, and all the damages suffered thereby, however peculiar they may be, and whatever issues they involve.' See, also *Cox v. Murray*, Abb. Adm. 342; *The J. F. Warner*, 22 Fed. Rep. 342; *The W. A. Morrell*, 27 Fed. Rep. 570; *The Baracoa*, 44 Fed. Rep. 102. In the latter case the action was for damages for breach of the stipulations of a charter-party, and, as respects jurisdiction, is indistinguishable from the present, though the form of remedy in this case is *in personam* only. The cross-libel is therefore properly brought, and falls within the rule; and the motion for stay of proceedings on the original libel, until security is given, is granted."

In view of the foregoing, and of the principles of law on which they rest, it is respectfully submitted that the services performed by the petitioner and the breach of contract by the respondents were of such character as to give rise to a maritime lien both under the General Admiralty Law and as "necessaries" under Section 971.

In *The Artemus*, 53 Fed. (2d) 672, at page 679 (D. C. S. D. N. Y.), Woolsey, J., stated:

"It is thus clear that the restrictive meaning of other necessities under the Act of 1910 has been enlarged by the wording of the Act of 1920, so that those words now cover not merely material things, but also services which are necessary for the operation or the preservation of the vessel."

In *The Gustavia*, 1830 D. C. S. D. N. Y. Fed. case No. 5876, 1 Blatch. & H. 189, a libel by a ship's broker against a foreign vessel for services, Betz, *J.*, said at page 191:

"By the term 'necessaries' the law does not contemplate those things only which are indispensable to the safety of the vessel and her crew, but whatever a prudent owner, if present, would be supposed to have authorized, the master may order, and the vessel will be held responsible for them. *Webster v. Seckamp*, 4 Barn. and Ald. 352."

In the case of *The Pleroma*, 175 Fed. 639, at page 640 (D. C. S. D. Alabama), Toulmin, *District Judge*, stated:

"The master in a proper case may bind his vessel for necessities. The test of his power is the needs of his vessel. When the necessity is shown for the supplies or repair, the rest is presumed, that is, that the vessel was used as a basis of credit, and that the law implies a lien. 'Necessaries' mean whatever is fit and proper for the service on which a vessel is indicated."

That the services were performed on land would not make them non-maritime. *The Ascutney*, 1922 D. C. D. Md. 278 Fed. 991, involving the shore expenses of a ship's agent.

POINT II.

The Circuit Court erred in deciding that the facts averred in the libel were insufficient in law to constitute a cause of action, and in affirming the order dismissing the libel.

The facts are undisputed that a contract was entered into between the petitioner and the claimant on behalf of the owners, K. Karras & Son, for the procurement of a crew for the SS "Karras". The petitioner's contention that the respondents and the Master breached the contract gives rise to a lien against the vessel and an *in personam* judgment for damages against the respondents.

Assuming, but not conceding, for the sake of argument, that no lien attaches to the vessel, nevertheless since the libel asked for a judgment *in personam* against the respondents, and since they appeared in the action, it was error for the Court to sustain the exceptions and dismiss the libel.

The libel herein was both *in rem* and *in personam* (R. 19). That both *in personam* and *in rem* relief may be joined in the same proceeding. It has been held that a Court could treat a suit begun *in rem* as one *in personam* where no injustice has been done thereby and the parties are before the Court. It is respectfully submitted that by the appearance of the proctors for the respondents and the claimant (R. 2, 23) the respondent K. Karras & Son submitted themselves to the general jurisdiction of this Court, and that the same constitutes a general appearance on behalf of the respondents as well as the claimant. It is conceded that the mere filing of a claim by the master did not constitute an appearance on behalf of K. Karras & Son, the respondent, but here we have more than that. Here the proctors have appeared for the respondents and the claimant.

In the case of *The Monte A.*, 12 Fed. 331 (D. C. S. D. N. Y.), at pages 336 and 337, Brown, *D.J.*, stated:

"The libel in this case, for a breach of contract of affreightment, might have been framed both against the owner *in personam* and against the vessel *in rem*. It was the practice in this court, long before the adoption of the supreme court rules in admiralty, to conjoin these remedies in cases of charter-party and affreightment. Those rules, while providing for the joinder of remedies in regard to various other subjects, do not provide for this; and under rule 46 it is, therefore, left subject to the regulation of the several district and circuit courts; and the former practice of joining these remedies in this class of cases exists in this district, as well as in other districts, the same as before. *The Zenobia*, 1 Abb. Adm. 48; *The Shand*, 10 Ben. 294; *The Keokuk*, 9 Wall. 517; *The Clatsop Chief*, 8 Fed. Rep. 164.

"The pleadings in this case contain all the requisite allegations for the full hearing and determination upon the merits of the owner's liability as in a suit *in personam*. The only thing wanting is a prayer in the libel for a monition and personal judgment against him. An amendment to this effect is no change in the substantial cause of action, but only in the relief demanded. As both modes of relief might have been sought in the same libel, it seems to me that it is clearly within the power of the court to permit an amendment by adding such a prayer for relief *in personam*, and for a monition against the owner."

In the case of *The Ethel*, 66 Fed. 340, the Court held that where no prayer for a personal judgment was made, the Court could not grant the same, indicating that where, as in the instant case, the prayer for relief specifically asks for

judgment *in personam* against the respondent K. Karras & Son (fol. 19) the Court would have jurisdiction to render a judgment *in personam* against the respondents, and that to have dismissed the libel as not stating facts sufficient to constitute a cause of action was contrary to law. It is elementary that upon a motion of this type the allegations of the libel are to be accepted as true, and it is, therefore, respectfully urged that sufficient facts were set forth to constitute a cause of action in admiralty, both *in personam* against K. Karras & Son, and *in rem* against the SS "Karras."

In *The Guiding Star*, 1 Fed. 347, at page 348, Brown, J., states:

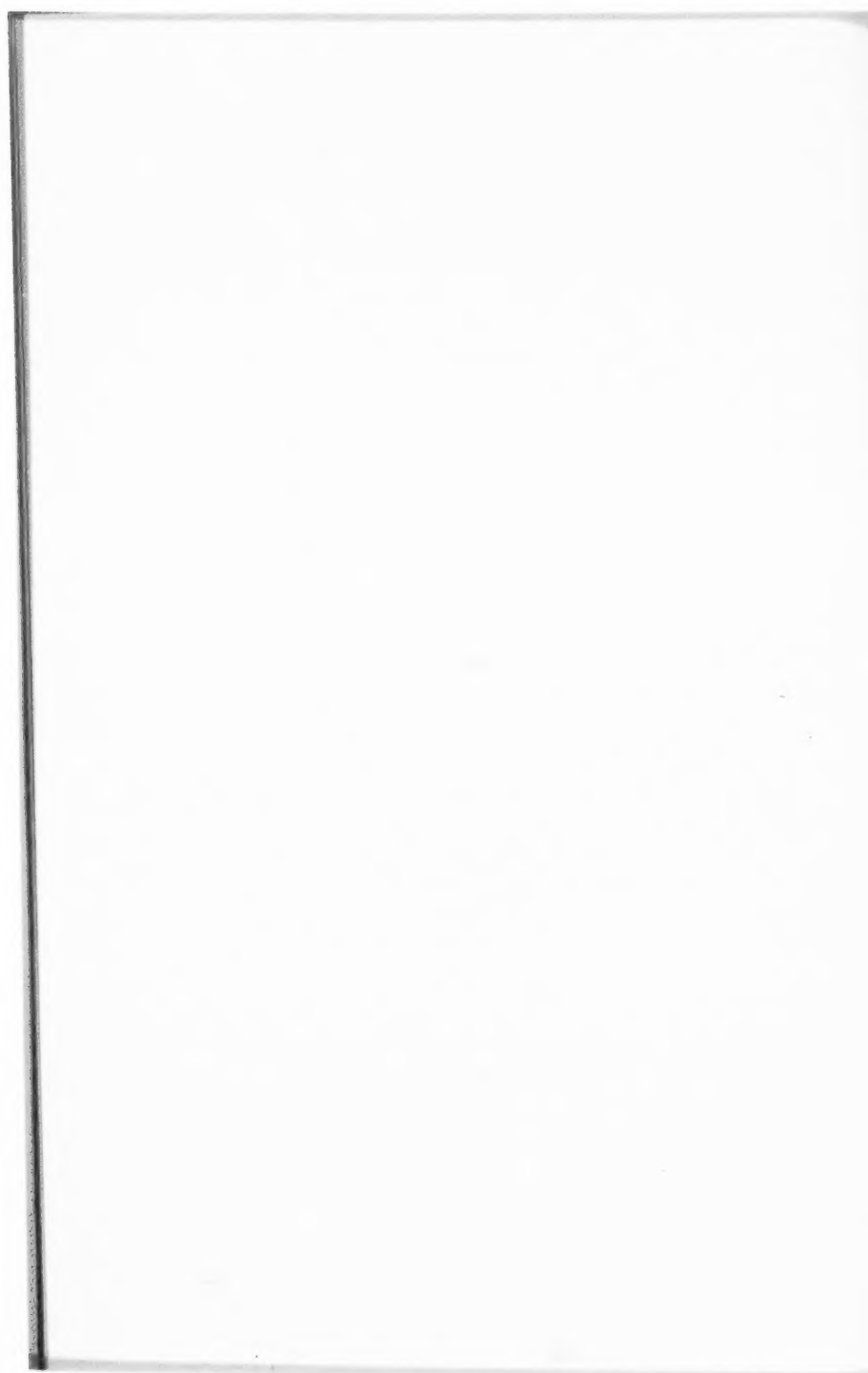
"It is true that there are certain cases in *rem* in which the libellant may join any number of demands, and in cases in *personam* *ex delicto* and *ex contractu* are not infrequently joined in the same libel (Dunlap's Admiralty 89)."

CONCLUSION

It is therefore respectfully submitted that the errors in law of the Court below, and the equities and justice of this case call for the exercise by this Court of its supervisory powers, and to that end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals for the Second Circuit and finally reverse it.

Respectfully submitted,

DAVID P. SIEGEL,
Attorney for Petitioner.



APPENDIX

(Decision of Circuit Court of Appeals)

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 221—October Term 1943.

(Argued January 11, 1944 Decided January 26, 1944.)

GEORGE GOUMAS,

Libellant-Appellant,

—against—

K. KARRAS & SON and SS "KARRAS", her engines, tackle,
appurtenances, etc.,

Respondents-Appellees.

Before

SWAN, CLARK and FRANK,

Circuit Judges.

Appeal from an order of the District Court for the
Southern District of New York dismissing appellants libel.
Affirmed.

DAVID P. SIEGEL for the libellant-appellant.

FREDERICK H. CUNNINGHAM for respondents-
appellees.

Appellant alleged in his libel that he is engaged in the Southern District of New York in the business of providing supplies and personnel for merchant vessels; that the master of the SS "Karras" asked him to supply fourteen (14) seamen for service thereon, representing to appellant that the vessel was fit and seaworthy and that the seamen's living quarters were fit and habitable; that the SS "Karras" was a merchant vessel flying under the flag of Greece, and was registered and owned in Greece by appellees, K. Karras and Son; that these appellees knew at the time that the ship was not seaworthy or habitable, but on the contrary was filthy and abounded with vermin; that the appellant relied on the representation made by the master and provided the seamen after repeating to them the representation made to him; that the seamen were transported to Montreal, Canada, where the ship was lying; that the seamen then found that the ship was not habitable and refused to engage in the service of the ship as they had agreed; that then, finding themselves stranded and without money, they lodged complaints with the authorities against appellees and appellant, as a result of which appellant was compelled to take steps to find positions for these men on other vessels, to retain counsel to defend himself in the proceedings arising upon the charges made against him, and to spend money for further transportation of the seamen and their maintenance; that the appellant's office was picketed by an organization of merchant seamen, and that he suffered in his good name and reputation, to his business detriment and disadvantage; all to his damage in the sum of Twenty-Five Thousand Dollars (\$25000.00). The libel prayed that process issue against respondents K. Karras and Son, in personam and against the ship, and for other relief.

The master of the vessel appeared as claimant making claim to the vessel on behalf of K. Karras and Son, to the extent of whatever interest they might have in the vessel.

Exceptions were then filed to the libel on the ground (1) that the facts averred in the libel were insufficient to constitute a cause of action, (2) that the facts averred did not constitute a cause of action within the admiralty and maritime jurisdiction, and (3) that the facts averred did not give rise to any maritime liens upon the vessel. These exceptions were filed by "proctors for respondents and plaintiff". The "proctors for respondents and claimant" also gave notice bringing on the exceptions for argument. At the hearing argument, the Court below sustained the exceptions on the ground that there was no jurisdiction, and entered an order dismissing the libel. From that order appellant appeals.

FRANK, *Circuit Judge*:

We agree with what was said in the excellent opinion of the court below as to the lack of admiralty jurisdiction here. There is no jurisdiction in admiralty except of a maritime contract and the contract here was not of that character.¹ The same considerations apply if the libel be regarded as stating a tort claim; it is not a maritime tort. Affirmed.

¹ *Cory Bros. & Co. against United States*, 51 F. (2d) 1010 (C. C. A. 2) and case cited. *The Princes*, 12 F. (2nd) 808.

As the suit relates to events which occurred after the execution of the contract admiralty jurisdiction in any event would be doubtful.

Westfall Larsen & Co. v. Allman Hubble Tugboat Co., 73 F. (2nd) 200, 204 (C. C. A. 9). *Cory Bros. & Co. v. United States*, *supra*.



UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C.

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UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C. 1911

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United States Circuit Court of Appeals
FOR THE SECOND CIRCUIT

GEORGE GOUMAS,

1

Libellant-Appellant,

—against—

K. KARRAS & SON and SS "KARRAS", her engines,
tackle, appurtenances, etc.,

Respondents-Appellees.

DIMITRIOS MANTZAVINOS,

2

Claimant-Appellee.

Statement Under Rule 13.

This is an appeal from the final decree, order and judgment of the United States District Court for the Southern District of New York, sustaining the exceptions to a libel and dismissing the libel with costs, entered herein on the 7th day of July, 1943.

The libel herein was filed, and the claimant herein, on behalf of the respondents-appellees, filed exceptions to the libel.

3

Thereafter, by a notice of motion which was returnable on March 26th, 1943, a motion on said exceptions was made before the Honorable John Bright, United States District Judge, who rendered an opinion sustaining the exceptions to the libel and dismissing the libel.

Notice of Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 126-330

4

GEORGE GOUMAS,

Libellant,

—against—

K. KARRAS & SON and SS "KARRAS", her engines,
tackle, appurtenances, etc.,

Respondents.

5

DIMITRIOS MANTZAVINOS,

Claimant.

S I R S :

PLEASE TAKE NOTICE that the exceptions taken by the Claimant-Respondents to the libel will be brought on for argument and a motion made to sustain said exceptions at a Stated Term of the Court for the hearing of motions, to be held in the Court Rooms in the United States Court House, Foley Square, Borough of Manhattan, City, County and State of New York, on the 26th day of March, 1943, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

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Notice of Motion.

Dated: New York, March 20, 1943.

Yours etc.,

7

REID, CUNNINGHAM & FREEHILL,
Proctors for Respondents & Claimant,
Office & P. O. Address,
76 Beaver Street,
Borough of Manhattan,
City of New York.

To:

MELTON, LEBOVICI & ARKIN, Esqs.,
Proctors for Libellant,
Office & P. O. Address,
39 Cortlandt Street,
Borough of Manhattan,
City of New York.

8

9

Libel.**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

10

[SAME TITLE]

*To the Honorable Judges of the United States District Court
for the Southern District of New York:*

The libelant, by David P. Siegel, his proctor, respectfully
shows to this Court and alleges:

11 First: Upon information and belief, that at all the times
hereinafter mentioned, the SS "Karras" was a merchant
vessel flying the flag of the Kingdom of Greece and was
registered and owned in the Kingdom of Greece by K. Karras
& Son.

Second: That the libelant is a citizen of the United States,
with an office and place for the transaction of business
within the Southern District of New York.

12 Third: That the libelant is engaged in the Southern
District of New York, in the business of providing supplies
and personnel to merchant vessels and to persons and cor-
porations, both foreign and domestic, who should, in the
normal course of business, place their orders with him.

Fourth: That on or about the 21st day of September,
1940, the respondents, through the master of the SS "Karras",
requested the libelant to supply the SS "Karras" with
fourteen seamen for service thereon.

Fifth: That at that time, the respondents represented,
both expressly and impliedly, that the said vessel was in

Libel.

a fit and seaworthy condition, and that the crew's quarters and living conditions aboard the said vessel for the crew were, in all respects, fit, habitable and appropriate for the crew to live thereon during the course of the voyage about to be undertaken. 13

Sixth: That at that time, the respondents, their agents, servants and employees, well knew that the SS "Karras" was, in fact, neither in a seaworthy nor in a habitable condition; but that, on the contrary, the vessel was filthy and abounded with vermin, so as to make the vessel uninhabitable in its condition as it then existed.

Seventh: That relying upon the representation of the master as to the seaworthiness and habitability of the said SS "Karras", the libelant undertook to provide and did provide, as personnel for the said SS "Karras", fourteen seamen, as authorized and requested by the respondents, and repeated to these seamen the representations of the respondents that the SS "Karras" was seaworthy and in a fit and habitable condition. 14

Eighth: That pursuant to the agreement with respondents, these seamen were transported to the Port of Montreal, in the Dominion of Canada, where the libelant was informed the SS "Karras" was then lying. 15

Ninth: That, upon information and belief, despite the representations of the respondents to the contrary, the said seamen, upon arriving at the SS "Karras", at the Port of Montreal, found that the SS "Karras" was not, in fact, seaworthy or habitable and refused to proceed with the vessel as they had previously agreed to do.

Libel.

16 Tenth: That the seamen, upon leaving the "Karras", found themselves stranded and without money in their pockets, and they lodged complaints with authorities of both the United States and Canadian Governments against the respondents and against the libelant.

17 Eleventh: That by reason of the premises, the libelant was compelled to take such steps as he could to find positions for these seamen on board vessels other than the SS "Karras"; was compelled to retain counsel to defend himself in proceedings in the United States, arising upon charges made against him by reason of the representations of the respondents that he had repeated to these seamen; was compelled to spend large sums of money in the further transportation and maintenance of the seamen, hereinbefore referred to, in transferring some of them back to the United States and in keeping them, in the meantime, at various places and lodging houses; and was further compelled to spend large sums of money in disbursements and expenses in order that legal arrangements for some of the foregoing might properly be made.

18 Twelfth: That further, by reason of and as a result of the foregoing, the libelant's office was picketed and boycotted by a local organization of merchant seamen, and the libelant was caused to suffer grievously in his good name and reputation, to his business detriment and disadvantage.

Thirteenth: That by reason of the premises, the libelant has been damaged in the sum of Twenty-five Thousand Dollars.

WHEREFORE, libelant prays that process issue in due form of law, according to the course and practice of this honor-

Libel.

able Court, against the respondent K. Karras & Sons, in personam, and against the SS "Karras", her engines, etc.; and that all persons having or pretending to have any interest or title therein be cited to appear and answer, all and singular, the matters hereinbefore set forth; and that this honorable Court be pleased to decree the payment of Twenty-five Thousand Dollars to the libelant, and to condemn the said vessel, her engines, etc., to pay the same with costs; and that the libelants have such other, further and different relief as to this Court may seem just, equitable and proper in the premises. 19

DAVID P. SIEGEL,
Proctor for Libelant, 20
Office & P. O. Address,
11 West 42nd Street,
Borough of Manhattan,
City of New York.

Exceptions to Libel.**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

22

A 126-330

 [SAME TITLE]

DIMITRIOS MANTZAVINOS, the claimant herein, excepts to the libel herein on the following grounds:

1. That the facts averred in the libel are insufficient to constitute a cause of action.

23

2. That the facts averred in the libel do not constitute a cause of action within the Admiralty and Maritime jurisdiction.

3. That the facts averred in the libel do not give rise to any maritime liens upon the SS "Karras".

REID, CUNNINGHAM & FREEHILL,
Proctors for Respondents and Claimant,
Office & P. O. Address,
76 Beaver Street,
Borough of Manhattan,
City of New York.

24

To:

MELTON, LEBOVICI & ARKIN, Esqs.,
Proctors for Libelant,
Office & P. O. Address,
39 Cortlandt Street,
Borough of Manhattan,
City of New York.

Claim.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

25

[SAME TITLE]

And now appears Dimitrios Mantzavinos, and says that the registered and actual owners of the Steamer "Karras", subject to the rights of the Greek Government under its requisition 3660 on June 11, 1941, are K. Karras & Son, and abounded in vermin; that he relied upon the representation of the said steamer; wherefore he makes claim to the said vessel on behalf of the said K. Karras & Son, to the extent of whatever interest they may have in the said vessel, and prays to defend accordingly.

26

D. MANTZAVINOS

REID, CUNNINGHAM & FREEHILL,
Proctors for Claimant,
Office & P. O. Address,
76 Beaver Street,
Borough of Manhattan,
City of New York.

27

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, ss.:

DIMITRIOS MANTZAVINOS, being duly sworn, deposes and says:

Claim.

That he has read the foregoing claim and that the same is true to the best of his knowledge, information and belief.

28

D. MANTZAVINOS

Sworn to before me this
4 day of March, 1943.

SYLVIA GRAZZINI

Notary Public, New York County
N. Y. Co. Clk's No. 627 Reg. No. 4G702
Kings Co. Clk's No. 244 Reg. No. 4456
Queens Co. Clk's No. 1226 Reg. No. 4679
Bronx Co. Clk's No. 78 Reg. No. 246G44
Certificate filed in Richmond Co.
Commission expires Mar. 30, 1944

29

(Seal)

Opinion.**UNITED STATES DISTRICT COURT**

SOUTHERN DISTRICT OF NEW YORK

A-126-330

31

 GEORGE GOUMAS,

Libelant,

—against—

K KARRAS & SON and S.S. "KARRAS", her engines,
tackles, appurtenances, etc.

BRIGHT, D. J.

32

DAVID P. SIEGEL, Esq.,

Attorney for Libelant,

11 West 42nd Street, New York City.

REID, CUNNINGHAM & FREEHILL, Esqs.,

Proctors for Respondents,

76 Beaver Street, New York City.

FREDERICK H. CUNNINGHAM, Esq.,

Of Counsel.

The claimant excepts to the libel on the ground that the facts averred are insufficient to constitute a cause of action, do not constitute a cause of action within maritime jurisdiction, and do not give rise to any maritime lien. Libelant is a ship chandler, and provides supplies and personnel to merchant vessels when employed so to do. He alleges that the master of the S.S. "Karras" requested him to supply fourteen seamen for service thereon and at the time represented that the vessel was fit and seaworthy and the seamen's

33

Opinion.

34 living quarters fit and habitable. He further alleges that the respondents well knew at that time that the ship was not seaworthy or habitable, but, on the contrary, was filthy and abounded in vermin; that he relied upon the representations so made by the master and provided the personnel requested, after repeating to them the representations mentioned; that the seamen were transported to Montreal, where the ship was lying, that the men there found that the ship was not habitable and refused to proceed as they had agreed; that they then found themselves stranded and without money, lodged complaints with the authorities against respondents and libellant, as a result of which libellant was compelled to take steps to find positions for the men on other vessels, 35 to retain counsel to defend himself in proceedings arising upon the charges made against him, and spend money for further transportation and maintenance; that his office was picketed and boycotted by a local organization of merchant seamen, and he suffered in his good name and reputation to his business detriment and disadvantage, all to his damage in the sum of \$25,000. He prays that process issue against respondent *in personam*, and against the ship, which he asks be condemned to pay his damages and costs, and for other relief.

36 The complaint obviously is for an alleged breach of warranty in the making of a contract to furnish a crew. I do not think that such a contract would be a maritime one.

It seems clear that it is not all contracts relating to ships that hypothecates a vessel for their performance. The lien is a secret one which may operate to the prejudice of general creditors and purchasers without notice; it is, therefore, *Stricti juris*, and cannot be extended by construction, analogy or inference. *Oshaka Shoshene Kaisha v. Lumber Co.*, 260 U. S. 490-497.

Opinion.

In *Cory Bros & Co. v. United States*, 51 F. (2) 1010, cert. denied 278 U. S. 632, a libel was filed to recover of the United States expenses incurred by libelant in defendant a suit in which it was impleaded. The libel was dismissed, and the Circuit Court of Appeals affirmed. The suit in which it was impleaded was one brought against a steamship to recover damages to a shipment of flour. The United States, the owner of the ship, employed, among others, Cory Brothers to act as agents of the vessel in discharging the cargo. In the original suit, a decree was rendered exonerating Cory from fault in the discharge of the cargo. Thereupon Cory filed the present libel upon the theory that by reason of its employment as agent to attend the discharge, the United States became obligated to reimburse it for expenses incidental to such employment, including the attorneys' fees and disbursements it had incurred in the previous suit. Exceptions were filed on the ground that no cause of action in admiralty was alleged. They were sustained, and on appeal, the decision of the lower Court affirmed, Judge Swan writing:

"If the contract merely employed libelant to procure maritime services instead of obligating it to perform them itself, it may well be that a suit to recover compensation and disbursements would be not of maritime cognizance. Such a distinction has been frequently observed. Thus, while a contract for the charter of a ship is clearly maritime in nature, a contract creating an agency to obtain charterings has been held non-maritime. (Citing cases.) * * *"

The same has been held as to a contract with an agent to procure crews, *The Retriever*, 93 F. 480 (D. C. W. D.

Opinion.

Wash.) ; insurance on a ship, *Marquardt v. French*, 53 F. 603 (D. C. S. D. N. Y.) ; freight and passengers (citing cases) * * * The rationale has been thus stated: The distinction between preliminary services leading to a maritime contract and such contracts themselves has been affirmed in this country from the first, and not yet departed from. It furnishes a distinction capable of somewhat easy application. If it be broken down, I do not perceive any other dividing line for excluding from the admiralty many other sorts of claims which have a reference, more or less near or remote, to navigation and commerce. If the broker of a charter-party be admitted, the insurance broker must follow—the drayman, the expressman and all others who perform services having reference to a voyage either in contemplation or executed; Brown, J., in *The Thames* (D. C.) 10 F. 848. See, also, *The Harvey & Henry*, 88 F. 656 (C. C. A. 2) ; 1 Benedict, Admiralty (5th Ed.) Sec. 62. Apparently the same ground explains the decision in *Minturn v. Maynard*, 17 How. 477, 15 L. Ed. 235, where the libellant had been employed by the shipowner as general agent and had expended money for supplies, repairs and advertising of the ship. The suit was for disbursements and commissions and it was held that the agent's remedy was not a libel in admiralty, but a suit in assumpsit. (Citing cases) * * *

42 "It is difficult, if not impossible, to distinguish *Minturn v. Maynard* from the case at bar, and that decision would seem to be a controlling authority against admiralty jurisdiction of the present suit. Moreover, the appellee invokes the principle that even if the contract was maritime insofar as it related to attending to discharge of cargo, admiralty will not take jurisdiction of non-maritime transactions arising subsequent to the execution of a maritime contract."

Opinion.

In *The Humboldt*, 86 Fed. 351, it was held that a contract giving a person entire control of the passenger and freight business of a ship and constituting his general passenger and freight agent, was not maritime, nor was an agreement to solicit business for a ship and to act as agent in making maritime contracts. A claim for a lien for commissions was held not good on the theory that the services were to be performed on land and were similar to the ordinary contract of solicitors, ship brokers and business agents who have no part in the navigation of vessels. Shipping agents employed to procure crews for vessels are not entitled to a lien upon the vessels for their commissions. *The Retriever*, 93 Fed. 480. A contract to work on the ship is, of course, maritime. *Union Fish Co. v. Ericksen*, 248 U. S. 308, but not a contract to procure someone so to work. *Cory Bros. & Co. v. United States*, *supra*. And it seems to be well settled that a claim for breach of warranty in furnishing coal, which, because of its heating qualities, was not fit for ballast for which it is obtained, is not maritime; *Aktresskabet Fido v. Lloyd Brasileiro*, 267 Fed. 733, 738, affirmed 283 Fed. 62-74, ed. 260 U. S. 737; nor is one for fraud or misrepresentation inducing libellant to enter into a contract; *Gronvold v. Survar*, 12 F. Supp. 429; nor is one for relief from a fraudulent contract, *St. Paul F. & M. Insurance Co. v. Petroleum Navigation Co.*, 35 F. Supp. 350.

Here the contract under which suit is brought was clearly a land contract to furnish seamen. The maritime contract, if any, was that made by the seamen for work upon the ship. The suit here is not for commissions in furnishing these men; it is for damages arising subsequent to their tender of services, for nothing that happened upon the ship, but solely for special damages alleged to have been sustained by the libellant after the maritime contract, if any, was per-

Opinion.

formed or attempted to be performed, because of an alleged misrepresentation or warranty made prior to the commencement of such maritime services.

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Libelant claims that Section 971 of Title 49 U. S. C. A. gives him a lien. That section provides that "Any person furnishing repairs, supplies, towage, use of drydock or marine railway, or other necessities to any vessel * * * upon the order * * * of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*. But it has been held that that act made no change in the general principles of law as to maritime liens. *New Bedford Co. v. Purdy*, 258 U. S. 96-100; *The Dredge A*, 217 Fed. 617-629. And under that very statute, it was held that a broker was not entitled to a lien for services in shipping a crew in a home port on the theory that such services are necessities. *The Princess*, 12 F. (2) 808. In that case, attention was called to the conflict of authorities, and Judge Augustus N. Hand suggested that the words "other necessities" must be read in the light of the words "repairs, supplies." However, that may be, the recovery here sought is not for compensation in furnishing a crew, but for alleged damages arising subsequent to their refusal to serve.

47

For the reasons stated, therefore, the exceptions are sustained and the libel dismissed, with costs.

48

JOHN BRIGHT,
U. S. D. C.

Dated: N. Y., June 14, 1943.

Order Appealed From.

At a Stated Term of the United States District Court for the Southern District of New York held at the United States Court House in the Borough of Manhattan, City of New York, on the 7th day of July, 1943. 49

Present :

HON. JOHN BRIGHT,

District Judge.

A 126-330

[SAME TITLE]

The above cause having been duly brought on to be heard, pursuant to a motion on the exception to the libel on the 4th day of June, 1943, and the Court, on June 14, 1943, having duly made its decision in writing sustaining the exception to the libel and dismissing the libel, 50

Now, on motion of Reid, Cunningham & Freehill, Proctors for Claimant-Respondent, it is

ORDERED, ADJUDGED AND DECREED that the motion of the Claimant-Respondent, K. Karras & Son, for a dismissal of the libel as to it, is granted, and it is further 51

ORDERED, ADJUDGED AND DECREED that the Claimant-Respondent do have, receive and recover from the libelant, George Goumas and his stipulators, 24 State Street, New York City, the sum of \$245.20, costs as taxed, and shall have judgment in the amount of \$245.20, which sum shall bear interest from the date of entry hereof until the date of payment, and the Claimant-Respondent, K. Karras & Son, shall have execution against the Libelant therefor; and it is further

Order Appealed From.

52 ORDERED, ADJUDGED AND DECREED that unless this decree be satisfied or an appeal be taken therefrom within ten (10) days after service of copies thereof upon the Proctor for the Libelant. Claimant-Respondent, have execution against the Libelant and his Stipulators, their respective chattels, credits and lands to enforce satisfaction of this decree.

JOHN BRIGHT
U. S. D. J.

53

54

Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

55

[SAME TITLE]

SIR :

PLEASE TAKE NOTICE that George Goumas, the libelant-appellant in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree order and judgment of the United States District Court for the Southern District of New York, sustaining the exceptions to the Libel and dismissing the Libel with costs, entered herein on the 7th day of July, 1943, and from each and every part thereof.

56

Dated, New York, July 16th, 1943.

Yours, etc.,

DAVID P. SIEGEL,
Proctor for Libelant-Appellant,
Office & P. O. Address,
11 West 42nd Street,
Borough of Manhattan,
City of New York.

57

Notice of Appeal.

To:

58

GEORGE H. FOLLMER,
Clerk.

REID, CUNNINGHAM & FREEHILL, Esqs.,
Proctors for Respondents-Appellees,
76 Beaver Street,
New York City.

The within appeal is hereby allowed, this 19th day of
July, 1943.

JOHN BRIGHT
U. S. D. J.

59

60

Assignment of Errors.**UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK**

[SAME TITLE]

61

The petition of George Goumas assigns errors to the proceedings and decree of the District Court in the above entitled action as follows:

First: The District Court erred in deciding that the facts averred in the libel were insufficient in law to constitute a cause of action.

Second: The District Court erred in deciding that the facts averred in the libel did not constitute a cause of action within the admiralty and maritime jurisdiction of the United States.

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Third: The District Court erred in deciding that the facts averred in the libel did not give rise to any maritime lien upon the S. S. "Karras."

Fourth: The District Court erred in deciding that Section 971 of Title 49 U. S. C. A. did not apply to the cause of action alleged by the libelant-appellant.

Fifth: The District Court erred in denying libelant-appellant the right to file an amended complaint.

63

Sixth: The District Court erred in sustaining the exceptions and dismissing the libel with costs.

DAVID P. SIEGEL,
Proctor for Libelant-Appellant,
Office & P. O. Address,
11 West 42nd Street,
Borough of Manhattan,
City of New York.

Clerk's Certificate.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

64

 [SAME TITLE]

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, ss.:

65 I, GEORGE J. H. FOLLMER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is the transcript of the printed record of the said District Court in the above-entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this / 2 day of *November* in the year of our Lord one thousand nine hundred and forty-three and of the Independence of the said United States the one hundred and sixty-seventh.

Clerk.

(Seal)

66

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

67

[SAME TITLE]

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, September 3rd, 1943.

DAVID P. SIEGEL,
Attorney for Libelant. 68

REID, CUNNINGHAM & FREEHILL,
Attorneys for Respondents.

69



[fol. 24] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT, OCTOBER TERM, 1943

No. 221

(Argued January 11, 1944 Decided January 26, 1944)

GEORGE GOUMAS, Libellant-Appellant,

vs.

K. KARRAS & SON and SS "KARRAS", Respondents-Appellees
Before: Swan, Clark and Frank, Circuit Judges.

Appeal from an order of the District Court for the Southern District of New York dismissing appellant's libel. Affirmed.

David P. Siegel, for the Libellant-Appellant; Frederick H. Cunningham, for Respondent-Appellees.

[fol. 25] Appellant alleged in his libel that he is engaged, in the Southern District of New York, in the business of providing supplies and personnel for merchant vessels; that the master of the SS "Karras" asked him to supply fourteen seamen for service thereon, representing to appellant that the vessel was fit and seaworthy and that the seamen's living quarters were fit and habitable; that the SS "Karras" was a merchant vessel flying the flag of Greece and was registered and owned in Greece by appellees, K. Karras & Son; that those appellees knew at the time, that the ship was not seaworthy or habitable, but on the contrary was filthy and abounded in vermin; that appellant relied upon the representations made by the master and provided the seamen after repeating to them the representations made to him; that the seamen were transported to Montreal, Canada, where the ship was lying; that the seamen then found that the ship was not habitable and refused to engage in the service of the ship as they had agreed; that then, finding themselves stranded and without money, they lodged complaints with the authorities against appellees and appellant, as a result of which appellant was compelled to take steps to find positions for these men on other vessels, to retain counsel to defend himself in proceedings arising upon the charges made against him, and to spend money

for further transportation of the seamen and their maintenance; that appellant's office was picketed by an organization of merchant seamen, and that he suffered in his good name and reputation to his business detriment and disadvantage; all to his damage in the sum of \$25,000. The libel prayed that process issue against respondents K. Karras & Son in personam and against the ship, and for other relief.

The master of the vessel appeared as claimant, making claim to the vessel on behalf of K. Karras & Son to the extent of whatever interest they might have in the vessel. [fol. 26] Exceptions were then filed to the libel on the ground (1) that the facts averred in the libel were insufficient to constitute a cause of action; (2) that the facts averred did not constitute a cause of action within the admiralty and maritime jurisdiction; and (3) that the facts averred did not give rise to any maritime liens upon the vessel. These exceptions were filed by the "proctors for respondents and plaintiff." The "proctors for respondents and claimant" also gave notice bringing on the exceptions for argument. After hearing argument, the court below sustained the exceptions on the ground that there was no jurisdiction, and entered an order dismissing the libel. From that order appellant appeals.

FRANK, *Circuit Judge*:

We agree with what was said in the excellent opinion of the court below as to the lack of admiralty jurisdiction here. There is no jurisdiction in admiralty except of a maritime contract, and the contract here was not of that character.¹ The same considerations apply if the libel be regarded as stating a tort claim: It is not a maritime tort.

Affirmed.

¹ *Cory Bros. & Co. v. United States*, 51 F. (2d) 1010 (C. C. A. 2) and cases cited; *The Princess*, 12 F. (2d) 808.

As the suit relates to events which occurred after the execution of the contract, admiralty jurisdiction, in any event, would be doubtful. *Westfall Larsen & Co. v. Allman-Hubble Tugboat Co.*, 73 F. (2d) 200, 204 (C. C. A. 9); *Cory Bros. & Co. v. United States*, *supra*.

[fol. 27] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 22nd day of March one thousand nine hundred and forty-four.

Present: Hon. Thomas W. Swan, Hon. Charles E. Clark, Hon. Jerome N. Frank, Circuit Judges.

GEORGE GOUMAS, Libellant-Appellant,

vs.

K. KARRAS & SON and SS "KARRAS", Respondents-Appellees

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 28] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. George Goumas, v. K. Karras & Son, & SS. Karras, etc. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 22, 1944. Alexander M. Bell, Clerk.

[fol. 29] Clerk's Certificate to foregoing transcript omitted in printing.